

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD BINIEK and)	CASE NO. 3:14-1154
MARLA BINIEK,)	
)	(JUDGE MANNION)
Plaintiffs)	
)	
v)	
)	
MARMAXX OPERATING)	
CORPORATION d/b/a TJ MAXX and)	
JOFRAN, INC.,)	
)	
Defendants)	

PLAINTIFFS' RESPONSE TO DEFENDANT JOFRAN SALES, INC.'S MOTION IN LIMINE TO PRECLUDE LAY WITNESS TESTIMONY REGARDING ALLEGED PRODUCT DEFECT

Plaintiffs, by and through their attorneys Galfand Berger LLP, hereby respond to the Motion in Limine of Defendant Jofran Sales, Inc. to preclude lay opinion testimony regarding product defect and in support thereof aver as follows:

1. Denied. Ms. Hughes does not offer, and Defendant Jofran does not identify, any opinion that falls under F.R.E. 701.
2. Denied. See Plaintiffs' Response to Paragraph 1.
3. Denied. Defendants' mischaracterize Ms. Hughes' testimony and cannot and do not point to any quote from her deposition testimony in which Ms. Hughes stated this.
4. Denied. Ms. Hughes' testimony was limited to factual matters of which she had personal knowledge. At no point did Ms. Hughes offer any opinion. Ms. Hughes simply testified as to the condition of the subject chair and other display chairs that she observed on the day of Plaintiff-Husband's accident and whether the photographs depict that same condition. For instance, Ms. Hughes stated, "I can see where the word is **damaged**. ... I can see hairline

[cracks]. And then this would be where a bolt was put through **and obviously put through too tight, because the wood around it is cracking**.” (Hughes Dep., Ex. A, at 36-37). Throughout her deposition, Ms. Hughes made it clear that she was **not offering her opinion**, but rather only stating her **observations** from her recollections, as well as pointing out obvious cracks in the wood to Defense counsel who tried to lead the witness into turning a blind eye to the clear cracks in the subject chair. Ms. Hughes was not confused and offered no opinion, rather she provided her firsthand knowledge of the chair conditions she observed.

5. Denied. Ms. Hughes’ deposition transcript, as a written document, speaks for itself and no response is required. By way of further response, Ms. Hughes offered ample clarification of all her statements that Defense Counsel for Jofran struggled to understand.

6. Denied. Ms. Hughes’ deposition transcript, as a written document, speaks for itself and no response is required. By way of further response, Defendant Jofran still has not pointed to a portion of Ms. Hughes’ testimony that is an “opinion” as opposed to her recollection of the condition of the chair, which is a matter of fact, not opinion.

7. Denied. Ms. Hughes’ deposition transcript, as a written document, speaks for itself and no response is required. By way of further response, Defendant Jofran still has not pointed to a portion of Ms. Hughes’ testimony that is an “opinion” as opposed to her recollection of the condition of the chair, which is a matter of fact, not opinion.

8. Denied. Ms. Hughes’ deposition transcript, as a written document, speaks for itself and no response is required. Plaintiffs particularly deny that it is “demonstrably false” that Ms. Hughes’ observation on the day of the accident that the subject chair and other display chairs had the same cracks. Defendants offer no proof of such falsity. Further, Ms. Hughes’ statement is yet again a statement of fact, not opinion, that does not fall within the purview of Rule 701. At

most, Defendant Jofran's Motion points out areas in which it may cross-examine Ms. Hughes, but nothing that Defendant can preclude. See Ghee v. Marten Transp., Ltd., 570 Fed. Appx. 228, 231 (3d Cir. 2014) (explaining opposing counsel can cross-examine on certain topics of "lay opinion" but cannot have them excluded).

9. Denied. Ms. Hughes responded honestly to Defendant's question concerning a very up close picture of a particular corner of a particular chair in which it was unclear whether that particular area had any cracks. Ms. Hughes testified that there were cracks in each of the chairs on display. (Hughes Dep., Ex. A, at 31). In a different picture of the chair referenced in Defendant's Paragraph 9, Ms. Hughes pointed out the cracks in that chair. Id. at 37. The particular picture shown to Ms. Hughes referenced in this paragraph may not have shown any cracks, hence Ms. Hughes' honest answer. However, her earlier statement of identifying cracks in the subject chair and each display chair remains unquestionably true, as Ms. Hughes identified said cracks. If anything, this paragraph contradicts Defendant Jofran's earlier contention in Paragraph 4 in which Defendant's unnecessarily and without reason called into question the veracity of Ms. Hughes.

10. Denied as stated. Plaintiffs do not present Ms. Hughes as an expert and she offers no opinion that requires training or specialized knowledge. Rather, to the extent that she offers any opinion at all—and Plaintiffs maintain her testimony is limited to factual observations outside the purview of Rule 701—those opinions "result from a process of reasoning familiar in everyday life," thus making it permissible witness opinion. F.R.E. 701 Advisory Committee Notes (2000).

11. Denied. Ms. Hughes does not offer such an opinion. Rather, she states the condition in which she saw the chairs: riddled with cracks. Defendant Jofran is drawing its own

conclusion from those statements that the chairs are defective. Plaintiffs would agree with that conclusion. However, it is not Ms. Hughes making the statement that the chairs are defective and therefore there is no testimony of hers that should be precluded.

12. Denied. The averments of this Paragraph are denied as conclusions of law to which no response is required. By way of further response, “[t]he modern trend favors admission of lay opinion testimony, provided that it is well founded on personal knowledge and susceptible to cross-examination.” Ghee v. Marten Transp., Ltd., 570 Fed. Appx. 228, 231 (3d Cir. 2014). Lay opinion is permissible if it is based on firsthand knowledge and would be helpful to the jury in understanding the witness’s testimony. Hirst v. Inverness Hotel Corp., 544 F.3d 221, 225-26 (3d Cir. 2008). If any portion of Ms. Hughes’ testimony is considered opinion, it must be determined to be proper lay opinion as it is based solely on her personal knowledge and does not stray into any area of specialized knowledge. Observing cracks in wood is a topic any adult individual, especially one who has previously put together chairs and other wood furniture, can readily attest to. (Hughes Dep., Ex. A at 31). At her deposition, as will be the case at trial, Defense counsel had every opportunity to fully cross-examine Ms. Hughes concerning her observations on the day of the accident and how the pictures reflect what she witnessed that day. Her statements concerning cracks in the wood and the position of screws and bolts are matters appropriate for cross-examination, not exclusion.

13. Denied. The averments of this Paragraph are denied as conclusions of law to which no response is required. By way of further response, see Plaintiffs’ Response to Paragraph 12 in which Plaintiff explains why Ms. Hughes’ testimony, to the extent this Court finds any of it to be opinion testimony, must be admitted as proper lay testimony.

14. Denied as stated. Plaintiffs would agree that Ms. Hughes cannot testify as to the ultimate question of whether the product is defective. However, Ms. Hughes does not do so and she is more than capable to testify to her observations as to the condition of the subject chair and other display chairs. Ms. Hughes is not “choosing up sides” or “tell[ing] the jury what result to reach.” See U.S. v. Stadtmauer, 620 F.3d 238, 263 (3d Cir. 2010) (explaining under what circumstances lay opinion should be excluded); U.S. v. Muhammad, 512 Fed. Appx. 154, 161 (3d Cir. 2013) (lay testimony permitted where the assertions were not meaningless and were more than “choosing up sides”). Rather, she relies on her personal knowledge of the matter at hand and states her observations in a manner that will help assist the jury—she goes no further than that.

15. Admitted.

16. Denied. Ms. Hughes does not offer any opinions, she testifies to her observations. Her observations, or any statements that she made that may be construed as opinions, need only be based on firsthand knowledge and be helpful to the jury in understanding the witness’s testimony. Hirst v. Inverness Hotel Corp., 544 F.3d 221, 225-26 (3d Cir. 2008). Ms. Hughes’ testimony is clearly based on firsthand knowledge as she was present at the scene of Plaintiff-Husband’s accident and immediately examined the subject chair and the other display chairs. (Hughes Dep., Ex. A, at 26).


17. Denied as stated. Defendant Jofran’s Motion in Limine must be denied because Ms. Hughes does not offer any impermissible testimony and Defendant Jofran’s apparent characterization of what is opinion is grossly mistaken. To the extent Ms. Hughes offered any opinion, it is permissible lay opinion, as explained herein and in the accompanying brief.

WHEREFORE, Plaintiffs Edward and Marla Biniek respectfully request that this Honorable Court DENY Defendant Jofran, Inc.'s Motion in Limine.

Respectfully submitted,

GALFAND BERGER, LLP

By:



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JOFRAN, INC.,)	
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Defendants)	

**PLAINTIFFS' BRIEF IN RESPONSE TO DEFENDANT JOFRAN SALES, INC.'S
MOTION IN LIMINE TO PRECLUDE LAY WITNESS TESTIMONY REGARDING
ALLEGED PRODUCT DEFECT**

I. MATTER BEFORE THE COURT

Before this Honorable Court is Defendant Jofran, Inc.'s Motion in Limine to Preclude Lay Witness Testimony Regarding Alleged Product Defect. While lay witnesses cannot opine on technical matters, it is common and necessary for witnesses to relay their observations. Plaintiffs would agree with Defendant Jofran that lay witnesses cannot testify as to technical matters requiring specialized knowledge, but Jofran's Motion is overbearing and seeks to censor the testimony of Tara Hughes who is simply prepared to testify as to what she saw. Defendant Jofran is essentially seeking to preclude Ms. Hughes from testifying to any facts she observed that are adverse to Jofran's position. Jofran cannot classify all of Ms. Hughes' observations as "opinion" just because it realizes Ms. Hughes' observations represent bad facts for them.

II. QUESTIONS PRESENTED

1. Should this Honorable Court DENY Defendant Jofran's Motion in Limine where it seeks to preclude as "opinion" the mere observations made by witness Tara Hughes?

Suggested Answer: YES

III. FACTS

This matter arises out of an incident that occurred on March 11, 2013 in which Plaintiff-Husband was shopping in a T.J. Maxx store for new chairs and sat on one of those chairs to test its comfort when said chair collapsed due to being defectively imported, manufactured, assembled, and sold. Plaintiffs have brought a products liability action against Defendant Jofran, Inc. and Defendant Marmaxx Operating Corp. (T.J. Maxx). Trial is set to begin October 5, 2015. The deposition of T.J. Maxx employee Tara Hughes was taken on October 8, 2014. Ms. Hughes was the first to respond to Plaintiff-Husband after his accident and observed that the subject chair and other display chairs all had cracks in them. (Hughes Dep., Ex. A, at 21, 26).

At her deposition, counsel for Defendant Jofran tried to mislead Ms. Hughes several times and tried to have her admit that she was only giving her opinion. To her credit, Ms. Hughes, who is not nearly as experienced a deponent as counsel is at taking depositions, corrected Defendant Jofran's counsel on each occasion.

By Mr. Stofko:

Q: Okay. So does that refresh your recollection? Because this piece isn't cracked, correct?

A: **IT IS. I CAN SEE WHERE THE WOOD IS DAMAGED.**

Q: Where?

Mr. Lynn: Just so the record -- she's still pointing to Murtha Exhibit 1E.

By Mr. Stofko:

Q: Where is that piece of wood cracked?

A: I can see hairline. And then this would be where a bolt was put through **and obviously put through too tight, because the wood around it is cracking.**

Q: When you say --

Mr. Lynn: She's referring to where one of the upper right-hand wood screw is placed, saying it's in too tight.

By Mr. Stofko:

Q: A screw and not a bolt, correct?

A: Yes, yes, a screw.

Q: But it's your opinion that that screw cracked this wood and there's a hairline crack there?

A: Yes, **THIS IS WHAT I SEE** in the black and white. Two, actually, yes.

(Hughes Dep., Ex. A at 36-37).

Throughout her deposition, Ms. Hughes made it clear that she was not offering her opinion, but rather only stating her **observations** from her recollections, as well as pointing out obvious cracks in the wood to Defense counsel who tried to lead the witness into turning a blind eye to the clear cracks in the subject chair. In its motion, Defendant Jofran is unable to point to even one instance in which Ms. Hughes did anything other than state a plain factual observation.

Defense counsel also attempted to mischaracterize Ms. Hughes' testimony, but again, she corrected him:

A: No, I'm talking about the three other chairs that we took off the floor, they were cracked. That's what I was talking about.

When we pulled the other chairs, like cracked, like streaming out like a river cracked, that were in the exhibits from the other chairs. That's what I was talking about, from the other chairs.

(Hughes Dep., Ex. A at 42).

Contrary to Defendant Jofran's Motion, Ms. Hughes identified cracks in each chair she was asked about. She did not identify cracks in a close up picture showing only a portion of the subject chair. However, she identified where there were cracks in that very same chair elsewhere in other pictures that better represented the condition of the chair. (Ex. A at 37). Ms. Hughes' testimony was not contradictory on this matter and was in fact unwavering, despite Defense counsel attempting to lead her astray.

IV. ARGUMENT

Defendant Jofran's Motion in Limine cannot possibly be granted because Defendant Jofran is attempting to use the prohibition against lay opinion on technical matters to censor the

observations and statements of fact offered by witness Tara Hughes. Rule 701 applies only to opinions, not observations. Ms. Hughes' testimony quoted in Defendant Jofran's Motion in Limine is patently factual observations, not opinions. Ms. Hughes' testimony concerning whether she witnessed cracking and the position of the screws and bolts are simply things she saw, not conclusions or extrapolations that would render her testimony impermissible opinion. Defendant Jofran cannot prevent Ms. Hughes from testifying to her personal knowledge obtained through observation. At most, Defendant Jofran's motion is an outline for cross-examination of Ms. Hughes, but it does not properly attack any of her testimony in such a manner as to render it inadmissible.

F.R.E. 701 deals exclusively with opinion testimony by lay witnesses, not with observations by lay witnesses. In full, F.R.E. 701 states:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Witness Tara Hughes offers no opinions in her testimony that would fall under Rule 701.

Plaintiffs would agree that Ms. Hughes is not an expert in furniture-making or woodworking and cannot render an opinion that the chair is "defective." However, Ms. Hughes' testimony is simply what she observed. F.R.E. 701 does not exclude a lay person from offering objective testimony concerning their observations.

While Plaintiffs maintain that Ms. Hughes merely testifies as to her observations and does not offer any opinion, to the extent that this Court believes Ms. Hughes does offer opinion,

it is must be found to be permissible lay opinion. “The modern trend favors admission of lay opinion testimony, provided that it is well founded on personal knowledge and susceptible to cross-examination.” Ghee v. Marten Transp., Ltd., 570 Fed. Appx. 228, 231 (3d Cir. 2014). Lay opinion is permissible if it is based on firsthand knowledge and would be helpful to the jury in understanding the witness’s testimony. Hirst v. Inverness Hotel Corp., 544 F.3d 221, 225-26 (3d Cir. 2008). If any portion of Ms. Hughes’ testimony is considered opinion, it must be determined to be proper lay opinion as it is based solely on her personal knowledge and does not stray into any area of specialized knowledge. Observing cracks in wood is a topic any adult individual, especially one who has previously put together chairs and other wood furniture, can readily attest to. (Hughes Dep., Ex. A at 31). At her deposition, as will be the case at trial, Defense counsel had every opportunity to fully cross-examine Ms. Hughes concerning her observations on the day of the accident and how the pictures reflect what she witnessed that day. Her statements concerning cracks in the wood and the position of screws and bolts are matters appropriate for cross-examination, not exclusion.

In no way has Ms. Hughes relied on scientific, technical, or otherwise specialized knowledge to identify the cracks she has seen in person and in photographs of the same chairs. Because her testimony is not technical in nature, there is no “aura of expertise” and no possibility that the jury will be misled and mistake her for an expert. Donlin v. Philips Lighting N. Am. Corp., 564 F.3d 207 (3d Cir. 2009). Defendant Jofran has pointed to no point in Ms. Hughes’ testimony in which she purports to be offering scientific, technical, or otherwise specialized knowledge that would be within the scope of F.R.E. 702. Estate of Edward W. Knoster v. Ford Motor Company, 200 Fed. Appx. 106, 111 (3d Cir. 2006).

Ms. Hughes' observations of cracking in the wood "result from a process of reasoning familiar in everyday life," thus making it permissible witness opinion. F.R.E. 701 Advisory Committee Notes (2000). Such reasoning is distinguished from expert testimony that can only be offered when a field has been mastered by a specialist. *Id.* Identifying cracks in wood is not something that requires specialized knowledge and can readily be performed by a lay person who viewed the subject chair and adjacent display chairs on the day of the accident and again in photographs at her deposition. Ms. Hughes is not "choosing up sides" or "tell[ing] the jury what result to reach." *See U.S. v. Stadtmauer*, 620 F.3d 238, 263 (3d Cir. 2010) (explaining under what circumstances lay opinion should be excluded); *U.S. v. Muhammad*, 512 Fed. Appx. 154, 161 (3d Cir. 2013) (lay testimony permitted where the assertions were not meaningless and were more than "choosing up sides"). Rather, she relies on her personal knowledge of the matter at hand and states her observations in a manner that will help assist the jury—she goes no further than that.

V. CONCLUSION

For the reasons set forth at length above, Plaintiffs respectfully request this Honorable Court DENY Defendant Jofran's Motion in Limine to Preclude Lay Witness Testimony Regarding Alleged Product Defect.

Respectfully submitted,

GALFAND BERGER, LLP

By:

A handwritten signature in black ink, appearing to read 'RJurewicz', is written over a horizontal line.

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MARMAXX OPERATING)	
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JOFRAN, INC.,)	
)	
Defendants)	

CERTIFICATION OF SERVICE

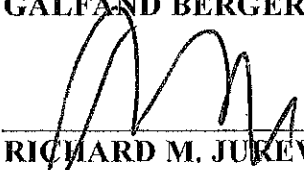
I, Richard M. Jurewicz, Esquire, do hereby certify that service of a true and correct copy of the within PLAINTIFFS' RESPONSE TO DEFENDANT JOFRAN SALES, INC.'S MOTION IN LIMINE TO PRECLUDE LAY WITNESS TESTIMONY REGARDING ALLEGED PRODUCT DEFECT was made on September 28, 2015, Electronic E-Filing upon the following:

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TARA HUGHES
BINIEK vs. MARMAXX OPERATING CORPOctober 08, 2014
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<p>1 - - -</p> <p>2 (It is hereby stipulated and agreed</p> <p>3 by and among counsel that signing, sealing,</p> <p>4 filing and certification are waived; and that</p> <p>5 all objections, except as to the form of</p> <p>6 questions, be reserved until the time of trial.)</p> <p>7 - - -</p> <p>8 TARA HUGHES, having been first duly</p> <p>9 sworn, was examined and testified as follows:</p> <p>10 - - -</p> <p>11 EXAMINATION</p> <p>12 - - -</p> <p>13 BY MR. JUREWICZ:</p> <p>14 Q. My name is Rick Jurewicz and I</p> <p>15 represent Mr. and Mrs. Biniek in a lawsuit they</p> <p>16 filed as a result of a chair collapse incident</p> <p>17 that took place in the T.J.Maxx Arena Hub store</p> <p>18 in Wilkes-Barre back in March of 2013.</p> <p>19 Do you know anything about the</p> <p>20 accident?</p> <p>21 A. I do. I -- actually, I saw the</p> <p>22 gentleman previous to the accident. I saw in</p> <p>23 the general vicinity where he was, he was there</p> <p>24 with two children. I didn't recall boy or girl,</p>	<p>1 that vicinity.</p> <p>2 Q. If I showed you some pictures,</p> <p>3 would that help you out?</p> <p>4 A. Sure.</p> <p>5 Q. Take a look at what's been marked</p> <p>6 as 1A, Fanelli, and there's a series of</p> <p>7 photographs.</p> <p>8 A. Okay.</p> <p>9 Q. And you obviously recognize what's</p> <p>10 in 1A, right?</p> <p>11 A. The front.</p> <p>12 Q. That's where you go get your pay?</p> <p>13 A. Not anymore.</p> <p>14 Q. And when did you stop working at</p> <p>15 T.J.Maxx?</p> <p>16 A. August of --</p> <p>17 Q. And why did you stop working --</p> <p>18 MR. LYNN: August of what?</p> <p>19 THE WITNESS: Of 2013.</p> <p>20 BY MR. JUREWICZ:</p> <p>21 Q. Why?</p> <p>22 A. Misunderstanding between</p> <p>23 Mr. Fanelli and I.</p> <p>24 Q. Was your decision to leave a</p>
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<p>1 but they were two children. And right when I</p> <p>2 walked past him, there was a clothing, like a</p> <p>3 clothing rack. We were -- where they were</p> <p>4 displayed, it was near the lingerie, so there</p> <p>5 was a clothing rack. So as soon as I passed</p> <p>6 him, I didn't see him sit, I heard -- I heard</p> <p>7 him go down, like immediately. So I, I just</p> <p>8 walked right back and he was on the ground. So</p> <p>9 that's, that's how I found him.</p> <p>10 But he was -- him and the two</p> <p>11 children were the only two -- like three people</p> <p>12 in the vicinity. So it was probably half a</p> <p>13 second when I walked and walked back and he was</p> <p>14 on the ground.</p> <p>15 Q. When you saw them for the first</p> <p>16 time, it obviously was before the accident?</p> <p>17 A. Yes.</p> <p>18 Q. Were they walking toward a</p> <p>19 particular area of the store?</p> <p>20 A. They were in the -- they were in</p> <p>21 the back where that display was, it was in the</p> <p>22 right-hand corner of the store near the offices</p> <p>23 and the break room and the bathrooms. So it</p> <p>24 was, it was behind the lingerie, so it was in</p>	<p>1 voluntary --</p> <p>2 A. Yes.</p> <p>3 Q. -- or involuntary one?</p> <p>4 A. Voluntary.</p> <p>5 Q. What did you think of Mr. Fanelli</p> <p>6 as a manager?</p> <p>7 A. If I'm under oath, very</p> <p>8 inappropriate.</p> <p>9 Q. Enough said.</p> <p>10 A. Um-hmm.</p> <p>11 Q. If you take a look at --</p> <p>12 A. This is right where the display</p> <p>13 was.</p> <p>14 MR. LYNN: You're referring to --</p> <p>15 BY MR. JUREWICZ:</p> <p>16 Q. 1E.</p> <p>17 MR. LYNN: -- Fanelli Exhibit 1E.</p> <p>18 THE WITNESS: Oh, 1E. I thought</p> <p>19 you said 1A, I'm sorry.</p> <p>20 BY MR. JUREWICZ:</p> <p>21 Q. That's all right. It wouldn't</p> <p>22 surprise me if I did.</p> <p>23 A. Okay.</p> <p>24 Q. Putting aside what merchandise is</p>

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<p style="text-align: right;">Page 9</p> <p>1 now on display, the area of the store is the</p> <p>2 area where you understand that Mr. Biniek had</p> <p>3 his accident?</p> <p>4 A. Yes.</p> <p>5 Q. And at the time, or I should say</p> <p>6 on the evening of his accident, did the store</p> <p>7 have what is referred to as those four elevated</p> <p>8 display areas?</p> <p>9 A. Yes.</p> <p>10 Q. And if we can use Exhibit Fanelli</p> <p>11 1E, where was it that you saw Mr. Biniek and his</p> <p>12 two children for the first time?</p> <p>13 A. For the first time, it was not</p> <p>14 even in this area. It was like I was greeting</p> <p>15 him throughout the store. Like I saw lots of</p> <p>16 people, so I saw him walking through the store.</p> <p>17 That was the first time.</p> <p>18 Q. Maybe I should take a step back</p> <p>19 and ask you, in March of 2013, what was your</p> <p>20 position with T.J.Maxx?</p> <p>21 A. I was -- I was associate. I was</p> <p>22 going for front-end coordinator. So they were</p> <p>23 ready to like -- they were training me for</p> <p>24 front-end coordinator.</p>	<p style="text-align: right;">Page 11</p> <p>1 recall the day.</p> <p>2 BY MR. JUREWICZ:</p> <p>3 Q. You understand that that's where</p> <p>4 my questions were directed?</p> <p>5 A. Um-hmm, yes.</p> <p>6 Q. Fair enough.</p> <p>7 Was there what would be referred</p> <p>8 to as a merchandise coordinator that worked in</p> <p>9 March of 2013 for each -- that held the position</p> <p>10 as merchandise coordinator for each of the</p> <p>11 different departments?</p> <p>12 A. Yes, but I don't recall.</p> <p>13 Q. Karen Nagle, does that sound</p> <p>14 familiar?</p> <p>15 A. Yes, yes.</p> <p>16 Q. Was she there at the time of the</p> <p>17 accident?</p> <p>18 A. I don't recall.</p> <p>19 Q. Who was the head person, or who</p> <p>20 was running the store at the time?</p> <p>21 MR. LYNN: Of the accident?</p> <p>22 MR. JUREWICZ: Of course.</p> <p>23 THE WITNESS: The manager that you</p> <p>24 said that I was -- I did the report with. I</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. And in March of 2013, although you</p> <p>2 were training for a new position --</p> <p>3 A. Um-hmm.</p> <p>4 Q. -- was there an area of the store</p> <p>5 that you were assigned as a store associate?</p> <p>6 A. I was in men's and kids.</p> <p>7 Q. And men's and kids, does that</p> <p>8 include the home furnishing?</p> <p>9 A. No, no.</p> <p>10 Q. Do you know if there was someone</p> <p>11 that was assigned to the home furnishings or</p> <p>12 home décor department?</p> <p>13 A. There always is.</p> <p>14 Q. Do you know who the store</p> <p>15 associate was that evening or that shift?</p> <p>16 A. No, no.</p> <p>17 MR. LYNN: Are --</p> <p>18 MR. JUREWICZ: I'm on the day of</p> <p>19 the accident.</p> <p>20 MR. LYNN: Okay. Well, earlier</p> <p>21 you were just asking her about March of 2013.</p> <p>22 So I don't know if she's answering just for the</p> <p>23 month or for the day.</p> <p>24 THE WITNESS: No, I was trying to</p>	<p style="text-align: right;">Page 12</p> <p>1 can't recall her name. Murtha or Nash. Murtha?</p> <p>2 Mary Lu Murtha, yes.</p> <p>3 BY MR. JUREWICZ:</p> <p>4 Q. And was she an assistant store</p> <p>5 manager?</p> <p>6 A. Yes, yes. They're all like --</p> <p>7 Jerry Fanelli is the head and I guess there was</p> <p>8 like three like supervisors type.</p> <p>9 Q. So when you first saw Mr. Biniek</p> <p>10 for the first time with his kids, where in the</p> <p>11 store were they?</p> <p>12 A. They were in, in this particular</p> <p>13 area, because I was actually walking out of the</p> <p>14 break room, which is out of the picture, but</p> <p>15 it's like right in the corner. This is the</p> <p>16 right-hand corner of the store and the break</p> <p>17 room and the restrooms are like right here.</p> <p>18 Q. If we, if we take a look at 1G,</p> <p>19 you'll see a sign that says "Restrooms"?</p> <p>20 A. Yep. I was walking out of that</p> <p>21 area.</p> <p>22 Q. In the area where the sign</p> <p>23 "Restrooms" is located?</p> <p>24 A. Yes.</p>



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13-16

<p style="text-align: right;">Page 13</p> <p>1 Q. And in what direction were you 2 walking? 3 A. Towards the four displays. 4 Q. And at what point in time did you 5 see Mr. Biniek and his two children? 6 A. Right in front of the display. 7 Q. Which display? 8 A. It was one of the front two. I 9 can't recall. 10 Q. Were they still walking towards 11 the front display or had they stopped at that 12 point? 13 A. They stopped to look, to shop, to 14 look. 15 Q. Was that the first time you saw 16 them in the store that evening? 17 A. No. I think that's what I was 18 trying to say. Like I saw them just shopping 19 earlier, like just in passing. I recognized him 20 when I saw him again in that area. 21 Q. All right. Having seen him in the 22 store earlier that evening? 23 A. Um-hmm, yes. 24 Q. And then you went your way?</p>	<p style="text-align: right;">Page 15</p> <p>1 that's my recollection. 2 Q. That's important what your 3 recollection is, not necessarily what's shown 4 here. 5 A. No, I know, I know. They were 6 definitely chairs that were bolt -- put 7 together, like bolted. 8 Q. How do you know that? 9 A. Because when he did -- after he 10 did his paperwork, I said to Mary Lu Murtha, why 11 don't we check the rest of the chairs. And we 12 went out and we turned the rest of the chairs 13 over and they were all defective. So we took 14 them all back, me and her. 15 Q. And what was defective about the 16 chairs? 17 A. Where the bolts were going, they 18 weren't -- they weren't meeting like where the 19 wood would crisscross, and I guess -- the wood 20 would crisscross like this and then there was 21 a -- I'm not very much of a carpenter, but -- 22 Q. Well, hold on a second. Go ahead, 23 I'll make you a carpenter when your deposition 24 is over.</p>
<p style="text-align: right;">Page 14</p> <p>1 A. Yep. It was -- yep. He did 2 shopping, I had my break, so that would have 3 been a half an hour, and then I saw him again. 4 Q. And then when you saw him at the 5 display, had he stopped at that point to look 6 like he was observing something? 7 A. Yeah, yes. 8 Q. Do you know what he was looking 9 at? 10 A. The chairs. 11 Q. Do you know how many chairs that 12 were there? 13 A. I believe four. There were three 14 or four. 15 Q. And what kind of chairs were they? 16 A. That's what I was trying to 17 remember. They were like, they were -- they 18 were table chairs, like that you would use at a 19 table, not like a living room or anything. I 20 couldn't remember if they were wicker or wood, 21 but I'm seeing the picture, they're obviously -- 22 that must be the picture. I was trying to 23 recall all morning. But they were like, just 24 like pull-in chairs for a table. That's --</p>	<p style="text-align: right;">Page 16</p> <p>1 A. The bolts weren't meeting where 2 the legs would go in. So the bolt went through, 3 like the chairs are square and then they have 4 like, this is where the leg would be right here, 5 and then there's like, kind of like a, like a 6 little piece of wood. 7 Q. Like a block of wood? 8 A. Yes. And they were going in 9 through the block of wood and it looked like 10 they were directed towards each side of the leg 11 and they weren't meeting the legs. 12 So we, both of us, took the rest 13 of the chairs off the floor. 14 Q. And let's start first with the 15 chair that was involved in Mr. Biniek's 16 accident. 17 A. Um-hmm. 18 Q. And we'll get back to what you 19 heard and how soon you got over there, but since 20 you were on to the defective chairs, I want to 21 explore that issue with you. 22 A. Okay. 23 Q. Okay. After you -- after you 24 heard the sound, did you know what it was when</p>

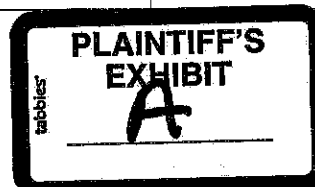


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17-20

<p style="text-align: right;">Page 17</p> <p>1 you heard the sound?</p> <p>2 A. I definitely knew it was somebody</p> <p>3 fell. Like because we have like those shiny</p> <p>4 concrete floors, it was just like a thump. And</p> <p>5 like right after these displays, there's a</p> <p>6 lingerie cart right here, and there was</p> <p>7 nothing -- nobody except three people, a man and</p> <p>8 two little children. So definitely knew it was</p> <p>9 somebody went down. And I was only like a split</p> <p>10 second ahead of the -- so I knew, I knew</p> <p>11 somebody went down.</p> <p>12 MR. STOFKO: When you say "right</p> <p>13 here," I don't want to cut you off, but the</p> <p>14 record can't reflect that. When you said "right</p> <p>15 here," as far as the lingerie rack, could you</p> <p>16 explain with respect to this?</p> <p>17 THE WITNESS: Oh, I was pointing</p> <p>18 kind of to the picture. Where the four like --</p> <p>19 MR. LYNN: Platforms?</p> <p>20 THE WITNESS: -- platforms are,</p> <p>21 right after, probably a good four or five feet,</p> <p>22 that's where the lingerie racks would start.</p> <p>23 MR. STOFKO: Would it be down and</p> <p>24 to the right if you're looking at the picture --</p>	<p style="text-align: right;">Page 19</p> <p>1 door, so going this way. I went around actually</p> <p>2 because you have to go around the platforms and</p> <p>3 then I was walking down this way, but it was</p> <p>4 like the vicinity of like right there.</p> <p>5 Q. And you said you were about four</p> <p>6 feet away from the platform?</p> <p>7 A. Yes, yes.</p> <p>8 Q. And your back was to the platform?</p> <p>9 A. Yes.</p> <p>10 Q. And when you passed the platform,</p> <p>11 Mr. Biniek was there with his two children?</p> <p>12 A. Yes.</p> <p>13 Q. And at that point in time, were</p> <p>14 any chairs on the floor?</p> <p>15 A. No. Not at that time, no.</p> <p>16 Q. Can you give me an idea, after you</p> <p>17 passed Mr. Biniek, how many steps, if you would</p> <p>18 want to do it by steps, or if you would want to</p> <p>19 do it by seconds, where you passed him and then</p> <p>20 heard a thud or a sound to indicate to you that</p> <p>21 something happened?</p> <p>22 A. It was only like three or four</p> <p>23 steps.</p> <p>24 Q. And how loud -- if you could,</p>
<p style="text-align: right;">Page 18</p> <p>1 MR. LYNN: Don't mark that,</p> <p>2 though.</p> <p>3 MR. JUREWICZ: I'm not, I'm not.</p> <p>4 It's already been marked. This is --</p> <p>5 MR. LYNN: I mean, don't have her</p> <p>6 mark somebody else's exhibit.</p> <p>7 MR. JUREWICZ: She's not.</p> <p>8 BY MR. JUREWICZ:</p> <p>9 Q. This has been marked Fanelli</p> <p>10 Number 2.</p> <p>11 A. Okay.</p> <p>12 Q. You're going to see, there's a red</p> <p>13 square box and, within that box, there's four</p> <p>14 small black boxes.</p> <p>15 A. Um-hmm.</p> <p>16 Q. Are you with me?</p> <p>17 A. Um-hmm.</p> <p>18 Q. Now, using this exhibit as a point</p> <p>19 of reference, can you tell me where you were</p> <p>20 when you heard the thud?</p> <p>21 A. Probably about right here.</p> <p>22 Q. So you're more towards, we'll say,</p> <p>23 going towards the front of the store?</p> <p>24 A. Yes, I was walking out of this</p>	<p style="text-align: right;">Page 20</p> <p>1 describe the sound that you heard.</p> <p>2 A. Well, he wasn't, as I recall, he</p> <p>3 wasn't a big man, because I kept saying, how</p> <p>4 could he break that chair? You know, I knew</p> <p>5 something was wrong. So it wasn't like a huge</p> <p>6 thud, but it was like out of the ordinary sound</p> <p>7 in a department store.</p> <p>8 Q. Sure.</p> <p>9 And when you turned around, what</p> <p>10 did you see?</p> <p>11 A. I saw him on the floor. And I</p> <p>12 believe one of the children was reaching for him</p> <p>13 already. But I, I tried to get over to him.</p> <p>14 And he said he was okay. But he hit pretty</p> <p>15 loud, you know, like I know I fell on those</p> <p>16 floors before, I know what that feels like.</p> <p>17 So like he stood up. And I told</p> <p>18 him not to go anywhere, because I wanted to get</p> <p>19 my manager. So he stood up and I asked him if</p> <p>20 he -- he first didn't want to do an accident</p> <p>21 report. And I said, no, you have to do an</p> <p>22 accident report. You know, I knew you had the</p> <p>23 accident. So I made him stay in the vicinity</p> <p>24 until I got Mary Lu and she came to him and then</p>



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<p>Page 21</p> <p>1 she asked him if he needed an ambulance. And he</p> <p>2 was fine walking. So they walked up to the</p> <p>3 front and then did the paperwork.</p> <p>4 Q. And when you first saw him, was he</p> <p>5 still on the floor?</p> <p>6 A. Yes.</p> <p>7 Q. And what was his position? Was he</p> <p>8 prone, was he sitting up, was he kneeling? I'm</p> <p>9 not trying to put words in your mouth.</p> <p>10 A. No, I'm trying to remember. I</p> <p>11 think he was on one knee, like actually like he</p> <p>12 was like he went down and like -- and he caught</p> <p>13 himself a little bit, but like he didn't like</p> <p>14 fall, like fall like completely. Like he fell,</p> <p>15 but like he caught himself with one knee type of</p> <p>16 thing.</p> <p>17 Q. How do you know that if you didn't</p> <p>18 see it?</p> <p>19 A. I think -- I recall him -- well,</p> <p>20 when I saw him on one knee, so within the three</p> <p>21 seconds. I don't know, I don't recall his age,</p> <p>22 but I think he was older than me. I don't know</p> <p>23 if he could have got from the sitting position</p> <p>24 to a knee at that time.</p>	<p>Page 23</p> <p>1 Q. And how long did it take you to</p> <p>2 get your assistant store manager?</p> <p>3 A. Not even two minutes. She was --</p> <p>4 she ran back.</p> <p>5 Q. And was the chair in still the</p> <p>6 same location and position?</p> <p>7 A. Yes, um-hmm.</p> <p>8 Q. And was Mr. Biniek still there?</p> <p>9 A. Yes.</p> <p>10 Q. And at what point in time, if any,</p> <p>11 did you take a look at the chair that was</p> <p>12 involved in his accident?</p> <p>13 A. Well, I recall all three of us</p> <p>14 actually turning it over. Like he was there</p> <p>15 when we looked at it.</p> <p>16 Q. I see.</p> <p>17 A. And so he saw the defect in that</p> <p>18 chair with us. So like we all looked, because</p> <p>19 we were all in shock, because he's not a very</p> <p>20 big man. So we all looked, so we saw and then</p> <p>21 we left it go and then we did our paperwork and</p> <p>22 stuff and then that's when we saw the other</p> <p>23 ones. We went and looked.</p> <p>24 Q. And what were your observations of</p>
<p>Page 22</p> <p>1 Q. What was the position of the</p> <p>2 chair?</p> <p>3 A. On the ground. Well, the leg was</p> <p>4 off. So it was like three legs, three legs and</p> <p>5 then the one down, so --</p> <p>6 Q. All right. And I get it that one</p> <p>7 of the legs was not connected to the chair</p> <p>8 anymore, right?</p> <p>9 A. Um-hmm, um-hmm.</p> <p>10 Q. So what was the position of the</p> <p>11 chair? Was it on the -- was it still upright,</p> <p>12 was it on its side, was it --</p> <p>13 A. It was tilted, it like fell to</p> <p>14 where the leg fell off, so it was tilted to the</p> <p>15 ground.</p> <p>16 Q. And when you called for your</p> <p>17 assistant store manager, did you do it by</p> <p>18 intercom, radio, cellphone?</p> <p>19 A. I ran up. I didn't -- we didn't</p> <p>20 have -- we didn't use the radios at the time, so</p> <p>21 I told him, please stay right where you are, and</p> <p>22 I ran to get her.</p> <p>23 Q. Did you touch the chair at all?</p> <p>24 A. No.</p>	<p>Page 24</p> <p>1 the actual chair itself that was missing the</p> <p>2 leg?</p> <p>3 A. It was the same. The bolts were</p> <p>4 aimed, but not hitting wood.</p> <p>5 Q. And could you tell from looking at</p> <p>6 the bolts whether the bolts were fully recessed</p> <p>7 or were any part of the bolts --</p> <p>8 A. They weren't coming out, no. They</p> <p>9 were -- they were fully into the piece of wood</p> <p>10 that it's supposed to go in, but never connected</p> <p>11 to the other part.</p> <p>12 Q. And what -- you were referring to</p> <p>13 the bolts?</p> <p>14 A. Um-hmm.</p> <p>15 Q. When you turned the chair over,</p> <p>16 did it have an area where there were four bolts?</p> <p>17 A. Every leg had a bolt. So,</p> <p>18 actually, like the leg that cracked, like it</p> <p>19 just -- like it didn't have any -- like it</p> <p>20 didn't have anything in it to hold it, it was</p> <p>21 just like, like from the top, it was bolted, I</p> <p>22 guess. That's how they were made. But it</p> <p>23 didn't have anything to hold it. So it could</p> <p>24 have happened on any leg the same thing. If the</p>

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<p style="text-align: right;">Page 25</p> <p>1 gentleman sat down and leaned to that way, it</p> <p>2 could have went any way if -- because they were</p> <p>3 all -- none of them were bolted the right way.</p> <p>4 Q. And were you surprised by what you</p> <p>5 saw?</p> <p>6 A. Yes.</p> <p>7 Q. Did you tell your assistant store</p> <p>8 manager what your own impression was when you</p> <p>9 looked at the chair?</p> <p>10 A. I told her I was embarrassed.</p> <p>11 Q. Why were you personally</p> <p>12 embarrassed if it wasn't your chair?</p> <p>13 A. Because I was representing the</p> <p>14 store.</p> <p>15 Q. Are chairs -- have you ever been</p> <p>16 involved where merchandise is taken off of a</p> <p>17 trailer and then taken to the floor for display?</p> <p>18 A. Not in that particular store, no.</p> <p>19 Like clothing. Not like chairs or anything.</p> <p>20 Q. Had you ever been involved in</p> <p>21 taking merchandise from a trailer and then</p> <p>22 inspecting the merchandise before it goes on the</p> <p>23 floor?</p> <p>24 A. I was in clothing in that store,</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. I'm going to show you what's been</p> <p>2 marked as Murtha Exhibit 1, and there's a series</p> <p>3 of photographs there.</p> <p>4 A. Okay.</p> <p>5 Q. And take a look at each of the</p> <p>6 photographs.</p> <p>7 A. Yeah, that's -- yeah, my --</p> <p>8 MR. LYNN: Just wait for a</p> <p>9 question.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. JUREWICZ:</p> <p>12 Q. Let's start first --</p> <p>13 MR. LYNN: He wants you to look at</p> <p>14 them all first.</p> <p>15 MR. JUREWICZ: Well, no, we'll go</p> <p>16 in order this way.</p> <p>17 MR. LYNN: Oh, okay.</p> <p>18 BY MR. JUREWICZ:</p> <p>19 Q. Let's start with the first</p> <p>20 photograph. Do you recognize what's shown in</p> <p>21 Murtha-1A?</p> <p>22 A. Yes.</p> <p>23 Q. What's that?</p> <p>24 A. That's the chair the gentleman</p>
<p style="text-align: right;">Page 26</p> <p>1 and so I started in August of 2012. And from</p> <p>2 August -- probably a good six months, we didn't</p> <p>3 even inspect the clothes. And then they got on</p> <p>4 us in the back to inspect the clothes. So I</p> <p>5 don't know the practice of the furniture.</p> <p>6 Q. Fair enough.</p> <p>7 A. But the clothing, like we had -- I</p> <p>8 guess somebody got in trouble and then all of a</p> <p>9 sudden we had to inspect the clothing. So I</p> <p>10 don't know if they follow the same policy with</p> <p>11 everything that came in.</p> <p>12 Q. When were the other chairs</p> <p>13 inspected after Mr. Biniek's accident?</p> <p>14 A. Immediately. I said, I said to</p> <p>15 Mary Lu, I said, let's look at these chairs.</p> <p>16 And she was in shock also. So both of us</p> <p>17 carried them back to the room.</p> <p>18 Q. And what, if anything, did Mary Lu</p> <p>19 say to you after you inspected the other chairs?</p> <p>20 A. She -- like I can even recall her</p> <p>21 personality, she's like, oh, my gosh, Tar, she</p> <p>22 was just -- it was candid, but almost in a</p> <p>23 little bit of embarrassment, shock herself. I</p> <p>24 can't speak for her emotion, but --</p>	<p style="text-align: right;">Page 28</p> <p>1 fell off of.</p> <p>2 Q. And if you take a look at</p> <p>3 Murtha-1B, what's shown in this photograph?</p> <p>4 A. That's the chair.</p> <p>5 Q. Does this appear to resemble the</p> <p>6 condition of the chair when you saw it that</p> <p>7 evening?</p> <p>8 A. Yes, yes. These are the good</p> <p>9 legs, actually. Yes.</p> <p>10 Q. All right. And you can see -- can</p> <p>11 you see, if you look in the photograph, any type</p> <p>12 of damage to any of the wood that's in the</p> <p>13 chair?</p> <p>14 A. Yes, that was -- that's what I'm</p> <p>15 recalling with the straight -- I knew there was</p> <p>16 a crack with the bolts. I knew something didn't</p> <p>17 match up. That's what I was trying to recall,</p> <p>18 but that's exactly what I recall now. It was</p> <p>19 the bolts damaged the wood. I guess my</p> <p>20 recollection was --</p> <p>21 Q. Yeah, you're doing good.</p> <p>22 A. -- of the --</p> <p>23 Q. And if you take a look at 1C.</p> <p>24 A. Yep, I remember that.</p>



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<p style="text-align: right;">Page 29</p> <p>1 Q. And 1D. 2 Now, you said something about the 3 bolt didn't go all the way through. I'm going 4 to show you a different photograph of what's 5 been identified as Exhibit Fanelli 3C. 6 And do you see the front of the 7 chair? 8 A. Yep. 9 Q. All right. Was there -- I mean, 10 does that represent -- I realize that this 11 picture now shows two legs rather than four 12 legs -- 13 A. Um-hmm. 14 Q. -- but is that what you meant, 15 that there was a portion where the bolt didn't 16 go through the entire wood? I wasn't sure by 17 your answer what you said. 18 MR. LYNN: Objection to form. 19 You can answer. 20 THE WITNESS: Actually, no. My 21 recollection was -- like I recalled the bolts 22 were not in the right way, but I recall them now 23 that way. They were in too far, that the wood 24 was cracking.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Yes. 2 Q. And the other chairs you looked 3 at, did they have a similar defect? 4 A. All -- yep. They all had the same 5 exact -- exact cracks where the bolts were. 6 Q. Did it appear to you that there 7 was poor workmanship in assembling the chairs? 8 MR. LYNN: Objection. 9 THE WITNESS: Can I answer? 10 MR. LYNN: Yes, you can answer. 11 BY MR. JUREWICZ: 12 Q. Yes. 13 A. Yes. 14 Q. Have you ever put together 15 anything? 16 A. Yes. 17 Q. Ever put any chairs together that 18 you got for Christmas or anything else like 19 that? 20 A. Yes. And I would do that. 21 Absolutely. And it would soften the wood and 22 crack faster. 23 MR. JUREWICZ: Thank you. That's 24 all I have.</p>
<p style="text-align: right;">Page 30</p> <p>1 MR. LYNN: Let the record reflect 2 that the witness was pointing to the corner of 3 the chair in the upper left-hand corner on 4 Exhibit Fanelli-3C. 5 BY MR. JUREWICZ: 6 Q. If we go to Fanelli-3G, all right, 7 you mentioned that now you believe that the 8 hardware was too far in? 9 A. Too far. Yeah, I knew it was the 10 hardware and I knew it was the part of the wood 11 that I saw. But, yeah, it was that, definitely. 12 I recall that. 13 Q. All right. And does this 14 illustrate what you meant by when you say the 15 hardware was too far in? 16 A. Yes. 17 MR. LYNN: Objection. She clar -- 18 that's not what she meant. She clarified that 19 earlier, Counsel, and corrected it. 20 BY MR. JUREWICZ: 21 Q. Is that what you meant? 22 A. Yes, that -- yes. 23 Q. And to you, is this what you 24 believe rendered the chair defective?</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. LYNN: Dan may have some. 2 - - - 3 EXAMINATION 4 - - - 5 BY MR. STOFKO: 6 Q. My name is Dan Stofko. I 7 represent Jofran in this matter. 8 You just testified that there 9 were -- you saw cracks in all the other chairs? 10 A. Yes. 11 Q. Were all the other chairs this 12 same particular model? 13 A. They were a set. Like we would -- 14 like if you would have purchased like four 15 chairs for a table, like the same, they were all 16 the same. 17 Q. And did you discuss those cracks 18 with Mary Lu Murtha? 19 A. Yes. That's why she and I took 20 them off the floor. 21 Q. And did you take any photographs 22 of those chairs? 23 A. I didn't personally, but that -- I 24 don't know if that was my job as an associate or</p>



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<p style="text-align: right;">Page 33</p> <p>1 if that was her job as a manager. 2 Q. All right. Do you know if those 3 chairs were preserved? 4 A. I don't know what -- I didn't know 5 what they do at the time to any of that stuff. 6 Q. When you took them off the floor, 7 where did you take them? 8 A. Into the back room. 9 Q. When you say back room -- 10 A. No, no, we didn't. There was like 11 a storage closet actually like where we kept our 12 soda locked up and we took them back there. 13 Like we didn't even take them to the back room 14 where all our merchandise was. We took them to 15 like a ten-by-ten room type of like locked. 16 Q. Did you ever see the chairs after 17 that? 18 A. No. 19 Q. Did you ever hear from anyone what 20 happened to those chairs? 21 A. No. 22 Q. How long did you work at T.J.Maxx 23 after that incident? 24 A. Until August of 2013.</p>	<p style="text-align: right;">Page 35</p> <p>1 MR. LYNN: Why don't we just show 2 her the same one. 3 MR. JUREWICZ: Yeah, yep. 4 BY MR. STOFKO: 5 Q. On 1E, and I'll represent -- 6 MR. LYNN: Just so -- we say 1E, 7 it's Murtha-1E. 8 THE WITNESS: Okay. 9 BY MR. STOFKO: 10 Q. On Murtha-1E, I'll represent this 11 shows the front corner, this is one of the legs 12 that was broken off, either originally or, as 13 you can see from these pictures, subsequently a 14 second leg was broken off this chair? 15 MR. LYNN: Objection to form. The 16 photographs that you're showing, Murtha 17 Exhibit 1, were taken at a time when only the 18 subject leg was broken off. So this is the 19 subject leg. I just don't want the witness to 20 be misled. 21 MR. STOFKO: No, that's good. 22 Thanks for clarifying. 23 THE WITNESS: Okay. What was the 24 question?</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Were you ever in that storage room 2 again? 3 A. Yes. For -- 4 Q. And did you -- 5 A. That's where we would go, they 6 locked the soda up, to bring the soda out to the 7 soda machine. And they weren't there, like -- 8 they weren't -- like they weren't there the 9 whole time, so I don't know when they left or -- 10 that's where we just took them that night. 11 Q. Do you remember ever seeing them 12 at any time after the incident? 13 A. No. 14 Q. Can you tell me specifically where 15 the cracks were located on the other chairs? 16 Not on the chair that broke, but on the other 17 chairs. 18 A. They were in the same, the same 19 place where the bolts met the legs; in all four 20 legs, in all the chairs. 21 Q. Front and back? 22 A. Um-hmm. Yes. 23 Q. This was 1E. I think I have that 24 marked right.</p>	<p style="text-align: right;">Page 36</p> <p>1 BY MR. STOFKO: 2 Q. This shows the inner corner of 3 that area where the leg broke off. I believe 4 your testimony was that all four corners had 5 cracked wood? 6 A. I meant like all legs, all these 7 pieces. 8 MR. LYNN: And she's referring to 9 the piece that the bolt goes into before it 10 reaches the actual leg itself. 11 BY MR. STOFKO: 12 Q. Okay. So does that refresh your 13 recollection? Because this piece isn't cracked, 14 correct? 15 A. It is. I can see where the wood 16 is damaged. 17 Q. Where? 18 MR. LYNN: Just so the record -- 19 she's still pointing to Murtha Exhibit 1E. 20 BY MR. STOFKO: 21 Q. Where is that piece of wood 22 cracked? 23 A. I can see hairline. And then this 24 would be where a bolt was put through and</p>



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<p style="text-align: right;">Page 37</p> <p>1 obviously put through too tight, because the</p> <p>2 wood around it is cracking.</p> <p>3 Q. When you say --</p> <p>4 MR. LYNN: She's referring to</p> <p>5 where one of the upper right-hand wood screw is</p> <p>6 placed, saying it's in too tight.</p> <p>7 BY MR. STOFKO:</p> <p>8 Q. A screw and not a bolt, correct?</p> <p>9 A. Yes, yes, a screw.</p> <p>10 Q. But it's your opinion that that</p> <p>11 screw cracked this wood and there's a hairline</p> <p>12 crack there?</p> <p>13 A. Yes, this is what I see in the</p> <p>14 black and white. Two, actually, yes.</p> <p>15 Q. You said two. Where do you see</p> <p>16 the two cracks?</p> <p>17 A. The upper right hand where, where</p> <p>18 the screw would go, that was -- it appears to me</p> <p>19 that it went through too tightly, so it cracked</p> <p>20 the wood a little bit. And underneath it, I can</p> <p>21 see it's the same markings as where the -- where</p> <p>22 the wood is pulling up, it's -- it's darker in</p> <p>23 the black and white. I don't know if you have a</p> <p>24 color one over there. I have black and white.</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Look at this corner in that one,</p> <p>2 please.</p> <p>3 MR. LYNN: Let me see if there's a</p> <p>4 closer one. Yeah, I guess that's all we got for</p> <p>5 you right now.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. LYNN: I'm sorry.</p> <p>8 THE WITNESS: That's all right.</p> <p>9 BY MR. STOFKO:</p> <p>10 Q. That inside corner?</p> <p>11 A. This one? Yep.</p> <p>12 MR. LYNN: So the record reflects,</p> <p>13 just that we're looking at Fanelli-3D right now.</p> <p>14 Is that what you have? Okay. All right.</p> <p>15 THE WITNESS: Now, in the colored,</p> <p>16 I only see the one damaged area, because I guess</p> <p>17 it was a darker part of the wood.</p> <p>18 MR. LYNN: She's pointing to the</p> <p>19 upper right-hand corner next to the wood screw.</p> <p>20 THE WITNESS: Right.</p> <p>21 BY MR. STOFKO:</p> <p>22 Q. Have you ever seen any photographs</p> <p>23 of any of the other chairs?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 38</p> <p>1 MR. LYNN: He's looking for one</p> <p>2 for you.</p> <p>3 THE WITNESS: Okay.</p> <p>4 MR. LYNN: Do you know which one</p> <p>5 this is?</p> <p>6 MR. STOFKO: I don't.</p> <p>7 MR. LYNN: Unless you want to mark</p> <p>8 it as a separate exhibit, but we shouldn't have</p> <p>9 to.</p> <p>10 Is that one of the Fanelli</p> <p>11 exhibits?</p> <p>12 MR. STOFKO: Yeah. This is when</p> <p>13 the two legs are off.</p> <p>14 MR. LYNN: All right. Is that the</p> <p>15 one you have here?</p> <p>16 MR. STOFKO: Yes.</p> <p>17 MR. LYNN: But this is the leg.</p> <p>18 THE WITNESS: Yeah.</p> <p>19 MR. LYNN: So you want her to</p> <p>20 focus on --</p> <p>21 MR. STOFKO: No, that's fine, she</p> <p>22 can focus on the other one. She said they were</p> <p>23 all cracked.</p> <p>24 BY MR. STOFKO:</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Now, earlier --</p> <p>2 MR. STOFKO: I'm sorry, Jim, are</p> <p>3 you ready?</p> <p>4 MR. LYNN: Yeah, I'm listening.</p> <p>5 I'm just trying to see if I can help you out</p> <p>6 here, believe it or not.</p> <p>7 BY MR. STOFKO:</p> <p>8 Q. Earlier you testified that you saw</p> <p>9 where the bolts didn't connect in the leg. Did</p> <p>10 we now clarify?</p> <p>11 A. Yes, I'm definitely clarified. I</p> <p>12 was -- I knew there was that angle. I knew it</p> <p>13 was a bolt or metal that was causing the</p> <p>14 problem, but this clearly clarifies my memory</p> <p>15 from a couple years ago.</p> <p>16 MR. LYNN: Dan, just so you know,</p> <p>17 these are the photos your adjuster took. It's</p> <p>18 my only copy, though.</p> <p>19 Does he have a color copier out</p> <p>20 there, you want to ask him, in case you want to</p> <p>21 mark this? Especially maybe this one?</p> <p>22 MR. STOFKO: Yes. And the one</p> <p>23 before, I think.</p> <p>24 (Exhibit No. Hughes-1, Color</p>



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<p style="text-align: right;">Page 41</p> <p>1 Photocopy of Photograph of Under Seat of Chair; 2 Exhibit No. Hughes-2, Color Photocopy of 3 Photograph of Under Seat of Chair, were marked 4 for identification.) 5 BY MR. STOFKO: 6 Q. If we reference Number 1 -- 7 A. Okay. 8 Q. -- and this shows one of the 9 corners of the subject chair, can you identify 10 any cracks in the wood there? 11 A. No cracks. Just -- it just 12 appears that the screws went too tight in. 13 Q. What do you base that opinion on? 14 A. How all four holes were, the wood 15 was like torn or shredded, whatever. I don't 16 know the word. But, I mean, if you put a screw 17 in the wood and you keep screwing and the wood 18 kind of like butterflies out. 19 Q. Do you mean like the shavings in 20 the hole? 21 A. Yes, yes. 22 Q. All right. But it's your -- I'm 23 sorry, just so we're clear, when you say 24 "butterfly out," you're talking about the</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. I just want to go back to 2 the incident itself. 3 And you had testified that you 4 came out from the back? 5 A. Yes. 6 Q. And walked around the furniture 7 area, correct? 8 A. Um-hmm. 9 Q. And in that time, you saw Mr. 10 Biniek? 11 A. Um-hmm. 12 Q. And his children? 13 A. Yes. 14 Q. And then was it correct that you 15 turned left to go down an aisle toward the front 16 of the store? 17 A. Well, I didn't turn necessarily. 18 Like you come out the back door and there's like 19 the four platforms, so you kind of like have to 20 snake around. I didn't make any turns, I'm just 21 snaking. Like here's the four platforms -- 22 here's the four platforms, and right here is 23 when I kind of snaked around, and that was the 24 first lingerie rack right here. And I was like</p>
<p style="text-align: right;">Page 42</p> <p>1 shavings? 2 A. The shavings, yes. 3 Q. All right. And then same question 4 on Number 2, when you look at the joint there on 5 the left in that photograph, do you see any 6 cracks there? 7 A. Yes. Coming off the right, upper 8 right-hand hole, there's a crack. 9 Q. Okay. And you believe that to be 10 a crack in the wood itself? 11 A. That's what it appears to be. 12 Q. All right. So when you say that 13 you saw cracks on all of the joints on all of 14 the chairs, are we talking about actual cracks 15 in the wood, or like you referenced in 16 Exhibit 1, some shavings near the hole? 17 A. No, I'm talking about the three 18 other chairs that we took off the floor, they 19 were cracked. That's what I was talking about. 20 When we pulled the other chairs, like cracked, 21 like streaming out like a river cracked, that 22 were in the exhibits from the other chairs. 23 That's what I was talking about, from the other 24 chairs.</p>	<p style="text-align: right;">Page 44</p> <p>1 feet, like just a couple steps away from where 2 he was. 3 Q. And then I believe it was your 4 testimony that at that time there were no chairs 5 on the floor, they were on the platforms? 6 A. No. I didn't see it on the floor 7 when I walked past, no. 8 Q. And then three or four steps later 9 is when you heard the sound? 10 A. Yes. 11 Q. Do you believe Mr. Biniek sat in 12 the chair while it was on the platform or on the 13 ground? 14 A. Definitely on the ground. Because 15 if he was on the platform, he would have hit his 16 head. He would have -- because the chairs are 17 always kind of towards the front or the side of 18 the platform, so like you would fall right off 19 the platform also and they're like a lift up. 20 So he would have hit his head. He was -- he 21 wouldn't have fell on his -- on his knees. 22 Q. Other than the fact that he -- the 23 way he fell, do you have any other basis for 24 believing the chair was put on the floor?</p>

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<p style="text-align: right;">Page 45</p> <p>1 A. Other than he told me so. He 2 said, all I did was take it off and I wanted to 3 try it out. And there's -- 4 Q. Okay. So do you believe in that 5 three or four steps from when you saw him and 6 there was no chair on the floor until the 7 accident happened, that he had time to take it 8 off the platform, sit it on the ground and then 9 sit down in it and the chair broke? 10 A. Yes, because it was -- it doesn't 11 take that long. They're not that heavy, you 12 just pick it up, put it down, sit. That's it. 13 Q. Did you hear him put the chair 14 down on the ground? 15 A. Yes. 16 Q. Can you describe generally your 17 circumstances for leaving T.J.Maxx's employment? 18 A. And why is that relevant? 19 MR. STOFKO: Jim, do you want to 20 direct her to answer the question? 21 MR. LYNN: I can't direct her to 22 answer the question. I'm not directing her not 23 to answer the question. 24 MR. STOFKO: I'm not going to get</p>	<p style="text-align: right;">Page 47</p> <p>1 Mr. Fanelli got my daughter the job. 2 So he asked me for a favor and I 3 kept it quiet. So now I'm meeting my lawyer 4 that maybe I'll be contacting. 5 Q. Did you ever take any concerns to 6 management at T.J.Maxx? 7 A. Absolutely not; because he was 8 married and he had a life and I was not about to 9 do anything. Nope. 10 Q. How about with respect to your 11 daughter being fired, did you ever -- 12 A. My daughter wasn't fired for 13 months later. And they called her up and told 14 her, she was under 18, told her that she took a 15 picture on social network while she was on the 16 clock, and everybody does, and they fired her. 17 MR. STOFKO: I have no further 18 questions. 19 - - - 20 FURTHER EXAMINATION 21 - - - 22 BY MR. JUREWICZ: 23 Q. Have the answers that you gave 24 here today been truthful and honest?</p>
<p style="text-align: right;">Page 46</p> <p>1 into a back-and-forth with your witness. It's a 2 discovery deposition. 3 THE WITNESS: I don't know, is 4 that relevant? 5 MR. LYNN: It's something he's 6 allowed to ask. I can't force you to answer a 7 question you don't want to answer. If he wants 8 to go to a judge and ask a judge that you answer 9 the question, that's up to him. 10 THE WITNESS: Oh, okay. Well, 11 Mr. Fanelli was too overly friendly. He got his 12 wife from the other store to get my daughter a 13 job. He got my husband some nonprofit money for 14 his, and then he asked me what I'm going to do 15 for him. There you go. 16 BY MR. STOFKO: 17 Q. And then shortly after that, I 18 assume you voluntarily resigned? 19 A. Yep. And I never told my husband 20 because my daughter still worked with his wife. 21 My daughter was -- after that, on Facebook, 22 social network, Mary Lu Murtha, they all took me 23 off of Facebook and then my daughter was fired 24 from the other store, the associate store, where</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Absolutely. 2 Q. And despite whatever disagreement 3 you had with your store manager, has that 4 affected your ability to be fair, true and 5 impartial? 6 A. It has not affected my ability. 7 Q. And you have no axe to grind with 8 T.J.Maxx? 9 A. Nope. I walked away. I mean, it 10 was a part-time job. I don't need it. 11 Q. No axe to grind with Jofran? 12 A. I don't even know who Jofran is. 13 Q. And you're not here to try and 14 help out Mr. Biniek unnecessarily? 15 A. Don't even know him. 16 Q. And can I have your home address, 17 please? 18 A. Sure. 394 East Washington Street, 19 Nanticoke, 18634. 20 Q. And I got a funny feeling I'll be 21 getting ahold of you at some point in time if 22 this case doesn't settle, so could I have your 23 cell phone number, please? 24 A. 804-1003.</p>



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<p style="text-align: right;">Page 49</p> <p>1 Q. And I promise I won't contact you</p> <p>2 unless this case does go to trial.</p> <p>3 A. Okay.</p> <p>4 MR. JUREWICZ: All right. Thank</p> <p>5 you very much.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. LYNN: Thank you very much.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 MR. JUREWICZ: Nice meeting you.</p> <p>10 THE WITNESS: You too.</p> <p>11 (Deposition is concluded at</p> <p>12 3:37 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	
<p style="text-align: right;">Page 50</p> <p>1 C E R T I F I C A T E</p> <p>2 I hereby certify that the</p> <p>3 proceedings and evidence noted are contained</p> <p>4 fully and accurately in the notes taken by me on</p> <p>5 the deposition of the above matter, and that</p> <p>6 this is a correct transcript of the same.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 <u>Denise D. Bach</u></p> <p>11 DENISE D. BACH</p> <p>12 Registered Professional Reporter</p> <p>13 Certified Court Reporter</p> <p>14 Notary Public - Expires March 2018</p> <p>15 DATE OUT: October 20, 2014</p> <p>16</p> <p>17</p> <p>18 (The foregoing certification of</p> <p>19 this transcript does not apply to any</p> <p>20 reproduction of the same by any means, unless</p> <p>21 under the direct control and/or supervision of</p> <p>22 the certifying reporter.)</p> <p>23</p> <p>24</p>	



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